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Ad Hoc Committee on Statelessness and Related Problems

Status of refugees and stateless persons

Memorandum by the Secretary-General

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/Ad Hoc Committee

Ad Hoc Committee on Statelessness and Related Problems

STATUS OF REFUGEES AND STATELESS PERSONS

Memorandum by the Secretary-General

On 8 August 1949, the Economic and Social Council adopted resolution No. 248 (IX) appointing "an ad hoc Committee consisting of representatives of thirteen Governments, who shall possess special competence in this field[1] and who, taking into account comments made during the discussions on the subject at the ninth session of the Council, in particular as to the distinction between displaced persons, refugees and stateless persons, shall:

"(a) Consider the desirability of preparing a revised and consolidated convention relating to the international status of refugees and stateless persons[2] and, if they consider such a course desirable, draft the text of such a convention;

"(b) Consider means of eliminating the problem of statelessness, including the desirability of requesting the International Law Commission to prepare a study and make recommendations on this subject;

"(c) Make any other suggestions they deem suitable for the solution of these problems, taking into consideration the recommendations of the Secretary-General referred to above."

The present document deals exclusively with question (a). Question (b) will be dealt with in another document.

The Question

Is it "desirable to prepare a revised and consolidated convention relating to the international status of refugees and displaced persons and, if such a course is desirable, to draft the text of such a convention?"

1/ The reference is to improving the status of refugees and stateless persons and the elimination of statelessness.

2/ It should be noted that the French and English text as reproduced in document E/1553 "Resolutions -- 5 July - 15 August 1949 -- Economic and Social Council -- Official Records: fourth year, ninth session, Supplement No. 1" -- page 60, vary on this point. The English text reads "of refugees and stateless persons" and the French text reads "des réfugiés et personnes déplacées".

/The answer

The answer should be in the affirmative.

1. The status of refugees and stateless persons should be determined by means of international conventions.

In his study of 1 February 1949,[1] the Secretary-General raised the question whether it was necessary to resort to the process of international conventions in order to determine the status of refugees, or if it might be enough to recommend to States that they should introduce changes in their legislation or their administrative practice.

In that connexion, the Secretary-General gave the following opinion:

"Nothing can of course be done in this respect without the collaboration, or a fortiori against the wishes of the countries of reception. But if the good intentions of those countries are to be translated into action, it is essential to resort to the method of a convention, for the following reasons:

"Certain measures, such as the provision of a document to take the place of a passport, necessitate a formal international agreement.

"Other measures which could in theory be adopted through legislation cannot actually be taken for technical and psychological reasons.

"In point of fact:

(a) No Government will be willing to take the first step in this direction for fear of being the only one to improve the status of stateless persons, thus causing an influx of them into its territory.

(b) Action on these lines, if taken by a single Government alone, might appear to be inspired by certain political views. Simultaneous action is the only means of avoiding such suspicion.

(c) A law designed to improve the status of stateless persons would have to contain a whole body of provisions impinging on the most varied branches of internal legislation. It would be difficult to get parliaments, habitually overburdened with work as they are, to adopt such a law, of an unwonted nature and content, which would require prior study by a number of Commissions.

1/ Document E/1112.

(d) Ratification of a convention in which all these provisions find their natural place gives rise to less difficulty.

(e) Experience in this field shows that nothing was done in the field of internal legislation to give effect to the recommendations contained in the Arrangement of 30 June 1928[1], although these recommendations, which were adopted after exhaustive discussion, answered to the intentions of numerous Governments. However, when they had been inserted in the 1933 and 1938 Conventions, these same provisions were incorporated in the law of the contracting countries.

(f) A general convention is a lasting international structure; being open to the accession of States which have not signed it, it encourages governments to associate themselves with the work of their forerunners; even if these governments are not in a position to accede to it, such a convention sometimes exerts a direct influence on the administrative and legal practice of their countries."

That is the method which has been followed hitherto. Conventions and agreements have been concluded to determine the status of refugees placed under the protection of international institutions.

It is essential to continue using the method which has hitherto been followed. The abolition of the International Refugee Organization will herald a new phase of the refugee problem.

This phase, which will begin after the dissolution of the International Refugee Organization, will be characterized by the fact that the refugees will lead an independent life in the countries which have given them shelter. With the exception of the "hard core" cases, the refugees will no longer be maintained by an international organization as they are at present. They will be integrated in the economic system of the countries of asylum and will themselves provide for

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1/ The text of the Arrangement concerning the juridical status of Russian and Armenian refugees, signed at Geneva on 30 June 1928, will be found in the Annex.

This arrangement, to which ten States became parties on 10 July 1944, is characterized by the fact that it consists in a series of recommendations addressed to States.

/their own needs

their own needs and for those of their families. This will be a phase of the settlement and assimilation of the refugees. Unless the refugee consents to repatriation, the final result of that phase will be his integration in the national community which has given him shelter. It is essential for the refugee to enjoy an equitable and stable status, if he is to lead a normal existence and become assimilated rapidly.

2. It is desirable to draw up a convention relating to the international status of refugees which would apply in principle to all categories of refugees to whom it is proposed to give international status.

The method hitherto followed was that of determining, by means of conventions, a special status for each specific category of refugees (Convention of 28 October 1933 relating to the so-called Nansen refugees and the Convention of 10 February 1938 concerning refugees coming from Germany) and, in some cases, extending the benefits of those conventions to other categories of refugees.[1/]

Historical development has taken the form of the successive extension of international protection to new categories of refugees. At present, this protection covers the most varied categories of refugees (see the Constitution of the IRO -- Annex I).

There are two possible methods of conferring an international status on the refugees who are to be protected:

(a) The first method would consist in extending the benefits of an existing convention to new categories of refugees or to all categories. That might be the Convention of 1933 which, unlike the Convention of 1938, contains no provisions which apply exclusively to refugees of one single origin and which is at present applied in certain countries to Russian, Armenian and Spanish refugees.

1/ Such extension was carried out in two ways:

- either by conclusion of a new international agreement (Additional Protocol of 14 September 1939, extending the benefits of the Convention of 1938 to refugees coming from Austria);
- or by means of special State decisions (France -- Decree of 15 March 1945 extending the benefits of the Convention of 1933 to the Spanish refugees).

/(b) The second

(b) The second method would consist in concluding a new convention, which would apply in principle to all categories of refugees to whom it is intended to give an international status.

The final result of these two methods would be to confer international status on all refugees whom it is intended to protect.

The second method would seem to be preferable to the first. It serves to unify and simplify the problem by giving the same status to refugees of various categories, who as a rule have the same needs and should, therefore, be allowed to enjoy the same status.

Furthermore, by determining the status of refugees in a new convention, it will be possible to take into consideration the lessons learned from experience, the requirements which have become evident in practice and the evolution of ideas since the period between the two wars.

It should be pointed out, however, that the question of which categories of refugees should enjoy international status is a separate problem. It will be dealt with in the comments on Article 1 of the draft convention given below.

3. Should the new convention co-exist with former Conventions or should it replace the latter in every respect?

The question is whether the new convention, once it has entered into force, should replace the existing Conventions in every respect, at least in so far as States parties to the new convention are concerned, or if, on the contrary, the new convention should be put into effect concurrently with the existing Conventions in the case of the States parties both to the new convention and to former Conventions.

There are two possible solutions:

A. A solution which would consist in deciding that the new convention should replace former Conventions.

The implications of this solution should be stated clearly. In any case the former Conventions would not be abrogated until all the States parties to those Conventions became parties to the new convention. There are States which though parties to former Conventions might not wish to become parties to the new convention; for these States the situation would obviously remain unchanged.

Nevertheless, so soon as States which are parties to the former Conventions become parties to the new convention, the latter would apply only to those States

/which would

which would no longer be bound by the former Conventions[1]. The resultant advantages would be simplicity and unity.

This solution might give rise to the following objections:

(a) It is well known that newly-concluded conventions are not usually ratified or acceded to until a considerable period has elapsed. Thus, the few States which would be the first to become parties to the new convention would find themselves committed vis-à-vis a smaller number of States than they are at present under the existing Conventions, even though these Conventions did not receive many ratifications or accessions[2].

In fact, however, it is a matter of little importance whether a State enters into a commitment with three States or with ten States, since the practical effects of such a convention relate to the treatment of refugees and not to the other States.

(b) Is there not a danger that this solution might, in some cases, be detrimental to results which have been achieved and which should be retained? It is true that some States might not be prepared to grant to the new categories of refugees certain advantages which they granted to various former categories covered by the existing Conventions. In those circumstances, the system of a single convention might limit the freedom of States and might be unfavourable to certain categories of refugees.

B. A solution which would consist in deciding that the new convention should co-exist with the former Conventions

The respective functions of the various conventions would be as follows: the new convention would apply to all refugees in respect of whom a State is not already bound by former Conventions.

1/ For this purpose, States wishing to become parties to the new convention would have to denounce the former Conventions.

2/ On 11 July 1944, the 1933 Convention was binding upon the following eight States: Belgium, Bulgaria, Denmark, France, United Kingdom of Great Britain and Northern Ireland, Italy, Norway, Czechoslovakia.

On 11 July 1944, the 1938 Convention was binding upon the following three States: Belgium, France, United Kingdom of Great Britain and Northern Ireland.

/The new

The new convention would represent the lex generalis, and the former Conventions would represent the lex specialis. Of course, there would be nothing to prevent States which would prefer to apply a single system from denouncing the former agreements to which they were parties at the time when they became parties to the new convention. That system has the advantage of being flexible, and would make it possible to satisfy the preferences of States.

4. Conception of the new convention

It would be desirable that the greatest possible number of States should become parties to the new convention. For this purpose, it is essential that the convention should not impose upon them obligations greater than those which they are prepared to accept. Nevertheless, it would be undesirable in order to gain wider accession to the convention, to adopt a rudimentary convention containing the minimum number of obligations and falling short of what some States might be prepared to grant.

The solution would be to adopt a flexible system which would meet the various requirements of States.

The convention should contain a minimum of obligations that would be binding on all the States which would become parties to it. On the other hand, it should contain other obligations in respect of which the States might make reservations.

The Committee should decide which of the provisions might be subject to reservations.

5. Draft convention submitted as a basis for discussion.

A preliminary draft convention, the text of which is attached as an Annex, is submitted to the Committee by the Secretary-General.

The present preliminary draft was prepared in consultation with the IRO; the collaboration of the Secretariat of that organization was extremely valuable.

The guiding principles which inspired this preliminary draft are as follows:

(a) The idea of an international juridical status of refugees is not new. Effect has already been given to this idea in various international agreements (Conventions of 1933 and 1938, and so forth). The present preliminary draft is, of course, to a large extent derived from those precedents, but it contains a considerable number of innovations, owing to the following circumstances: in the first place, the agreements which have been concluded are only binding upon a small number of States; in the second place, general usage with regard to the treatment

/of foreigners

of foreigners has advanced since the conclusion of the Conventions of 1933 and 1938 -- in social matters the tendency is to place foreigners on the same footing as nationals -- and in the third place, the conception of the refugee problem has also evolved.

(b) There is no question of granting the refugee a privileged position. It is important, on the one hand, to enable him to lead a normal and self-respecting life and, on the other hand, to facilitate his rapid assimilation in the country where he habitually resides.

In order to obtain this result, the refugee may, as the case may be, be given the same rights as foreigners in general, or granted the most favourable treatment enjoyed by certain foreigners, or be placed on the same footing as nationals.

(c) In view of the fact that the refugee has been received by a country enabling him to lead a normal life, there is no reason why he should elude certain especially heavy obligations which are incumbent on the nationals of the country, namely, military service and other personal services.

(d) The preliminary draft does not define the refugees who are to benefit by the convention. The complicated and delicate question, namely, which persons should benefit by the convention and whether the convention should contain such a definition, or should merely refer to the definitions given in other instruments, is dealt with in Article 1 of the Convention and in the comments on that article.

(e) The question arises whether stateless persons who are not refugees should benefit by the status to be determined in the Convention.

Article 2 of the preliminary draft convention deals with stateless persons who are not refugees. Consequently, the words "(and stateless persons)" in brackets have been added after the word "refugees" in every article. If the Committee decides to exclude stateless persons who are not refugees, it will be necessary to delete the words "(and stateless persons)" throughout.

(f) The preliminary draft provides for co-operation between States parties to the convention in relieving the burden assumed by the initial reception countries which have afforded asylum to refugees (Article 2, paragraph 2).

/(g) The preliminary

(g) The preliminary draft convention below is presented as a basis for discussion. In submitting this preliminary draft, the Secretary-General merely wished to facilitate the Committee's work. He does not wish to take sides in the many political aspects of the questions raised in it. The provisions of certain articles may give rise to controversy. Nevertheless, the Secretary-General thought it advisable to include them, in order that they should not escape the notice of the Committee.

/ANNEX

A N N E X

PRELIMINARY DRAFT CONVENTION RELATING TO THE STATUS OF REFUGEES (AND STATELESS PERSONS)

The present preliminary draft, which is preceded by a preamble, contains three main divisions.

The first division (Chapter I, Articles 1 and 2) relates to the scope of the convention, or to the persons who will benefit by the convention.

The second division (Chapter II to XIII, Articles 3 to 31) relates to the status of refugees properly so-called.

The third division (Chapter XIV, Articles 32 to 40) relates to the general provisions or final clauses.

Preamble

Considering that Article 6 of the Universal Declaration of Human Rights lays down that: "Everyone has the right to recognition everywhere as a person before the law" and that Article 15 (1) lays down that: "Everyone has the right to a nationality",

Considering that a refugee whose juridical status has not been determined does not possess a guarantee of the right to recognition everywhere as a person before the law,

Considering that a refugee who has been deprived of his nationality or who no longer enjoys the protection and assistance of the State to which he belongs nominally no longer has the advantages derived from the possession of nationality, to which everyone has the right,

Considering that stateless persons other than refugees are in the same unfavourable position,

Considering that until a refugee has been able either to return to his country of origin or to acquire the nationality of the country in which he has settled, he must be granted juridical status that will enable him to lead a normal and self-respecting life,

Considering that the same status should be given to stateless persons other than refugees,

The High Contracting Parties have decided upon the following provisions:

/Comments

Comments

Refugees who have been deprived of their nationality or who in fact no longer enjoy the protection and assistance of their country of origin run the risk of not being recognized in every place as persons before the law, owing to the difficulty of submitting the documents issued to them in their country of origin which constitute evidence of their identity and status.

In any case, they no longer enjoy the various advantages attaching to the possession of a nationality and they live in the abnormal conditions peculiar to de jure or de facto stateless persons. In those circumstances, it is desirable for refugees to acquire a new nationality, if they do not intend to return to their countries of origin in the near future. The acquisition of a nationality, however, in principle calls for a conjunction of wills, namely of the State granting naturalization and of the individual to whom it is granted. In order that such a conjunction of wills may be brought about, a number of conditions must be satisfied, especially the moral integration of the refugee in the life of the reception country. Meanwhile, it is essential in the interests both of the refugee and of the country which has received him that he should enjoy a status defining his rights and obligations and enabling him to live a normal and self-respecting life.

The case of stateless persons who are not refugees has been taken into account. It is for the Committee to consider what decision it should make with respect to them.

/CHAPTER I

CHAPTER I

SCOPE

Article 1

Definition of the term "refugee"

First solution

1. For the purposes of the present Convention, the term "refugee" means any person placed under the protection of the United Nations in accordance with the decisions of the General Assembly.

2. If the General Assembly, subsequent to the conclusion of the Convention, should place under the protection of the United Nations persons who were not so placed before, the States parties to the Convention would be entitled to inform the Secretary-General of the United Nations that they do not intend to be bound by these changes in the scope of the Convention or that it is their intention to be bound subject only to certain reservations indicated by them. If at the expiration of a time-limit of x months from the date of the resolution adopted by the General Assembly the States have not submitted a notification to this effect to the Secretary-General, they shall be bound by the said resolution as from the expiration of the above-mentioned time-limit.

Second solution

The refugees entitled to the status laid down by the present Convention are the refugees covered by the definitions contained in the Constitution of the International Refugee Organization (Annex I, Part 1, Section A).

Third solution

(The Ad Hoc Committee would draft a definition of refugees which would be inserted in the Convention.

The Secretary-General does not consider it necessary for the present to submit a draft definition.)

Comment

The problem of deciding which refugees should enjoy the status laid down by the Convention is difficult and complicated. The Secretary-General considers that rather than recommend a solution he should, after defining the problem, indicate the various possible solutions.

Three general solutions are possible:

/First solution

First solution -- The Convention would apply to all refugees placed under the protection of the United Nations

(1) It may be considered logical and normal to provide that the Convention on the status of refugees shall apply to all refugees placed under the protection of the United Nations. It would seem that if refugees have not been placed under the protection of the United Nations the same reasons for which that protection was not extended to them should cause their exclusion from the proposed Convention, and that, conversely, if refugees have been placed under the protection of the United Nations there are no grounds for their exclusion from the scope of the Convention, the precise object of which is to establish a legal status for refugees which will afford them the maximum protection.

(2) This solution however offers certain difficulties.

It may be questioned whether Governments would be willing as it were to sign a blank cheque, that is to say, not only assume undertakings in respect of the categories of refugees at present placed under the protection of the United Nations, but also bind themselves in respect of all categories of refugees who may in the future be placed under such protection.

Two ways out of this difficulty suggest themselves.

(a) The first way would be to relate the scope of the Convention to the situation obtaining at the time that the Convention is concluded.

This solution has the drawback of being static. If the General Assembly were to extend United Nations protection to other categories of refugees, such categories would not be covered by the Convention and there would be no justification for this difference of treatment.

(b) The second solution, which would make it possible to keep the scope of United Nations protection identical with that of the Convention, would be to provide that in the event of any modification by the General Assembly of the scope of United Nations protection the scope of the Convention would also be modified ipso facto.

N.v. Nevertheless, within a time-limit of x months from the date of the decision of the General Assembly, States would be entitled to declare that they did not accept the new definitions or accepted them only in part. Only in the event of their failure to make such a declaration would they be bound by the new definitions at the expiration of the said time-limit of x months.

/Second solution

Second solution -- Reference to the definitions contained in the Constitution of the International Refugee Organization

If it is decided to adopt and adhere to the IRO definitions, the simplest method would be to indicate in the Convention itself, by a mere reference to the Constitution of the IRO, what the scope of the Convention will be.

Third solution -- The Convention would itself define the refugees to which it applied

It is a well-known fact that the definitions contained in the Constitution of the IRO are very comprehensive. They include, primarily, all the categories of refugees which existed before the Second World War and, secondly, any person "who, as a result of events subsequent to the outbreak of the Second World War, is unable or unwilling to avail himself of the protection of the Government of his country of nationality or former nationality".

It would be possible to consider a revision of the IRO definitions and justification could be found for this. Presumably designed to broaden existing definitions, such revision could have the effect of eliminating some of the individual exceptions and conditions which had been introduced because the principal task of the IRO was the maintenance and the movement of refugees. It could help to simplify, clarify and shorten the IRO definitions without appreciably altering their scope.

It would be possible to diverge still further from the IRO definitions and to approach the problem completely afresh.

In the final analysis any plan for a general revision of the IRO definitions would have to take the following two considerations into account: 1. Should all refugees of whatever origin be included in the definition, subject, where necessary, to certain exceptions? Or, on the contrary, should the various categories of refugees whom it is intended to cover be enumerated? 2. Should the definition include future refugees, that is to say both refugees belonging to existing categories who may in the future seek refuge in another country and persons belonging to fresh categories of refugees?

It should be noted that during the discussion in the Third Committee which led up to the vote on the resolution of 3 December 1949, various speakers expressed the view that the Ad Hoc Committee should undertake the revision of the definitions contained in the IRO Constitution. By this they meant not the

/Convention

Convention concerning the status of refugees but the definition of the terms of reference of the High Commissioner for Refugees. The revision, however, was such as to serve both purposes. Nevertheless, these are individual views to which the General Assembly resolution does not refer.

It should be recalled that the drafting of the IRO definitions in its time gave rise to long and keenly argued debate. If the Ad Hoc Committee were to undertake the revision of these definitions, this work might take a long time and interfere with the accomplishment of the Committee's main task of determining the status of refugees -- a task requiring considerable effort.

Article 2

Stateless persons who are not refugees

The provisions of the present Convention shall apply to the refugees referred to in Article 1 and also to persons who are stateless de jure, either because they did not obtain a nationality at birth or because they lost the nationality which they possessed without acquiring a new nationality.

Comment

There are very compelling reasons why the Ad Hoc Committee should consider the case of stateless persons who are not refugees.

The Economic and Social Council raised the general problem of statelessness, which from this point of view is more comprehensive than the problem of refugees, in its resolution 116(VI)D of 1 and 2 March 1948, which reads as follows:

"THE ECONOMIC AND SOCIAL COUNCIL,

TAKING NOTE of the resolution of the Commission on Human Rights adopted at its second session regarding stateless persons,

RECOGNIZING that this problem demands in the first instance the adoption of interim measures to afford protection to stateless persons, and secondly the taking of joint and separate action by Member nations in co-operation with the United Nations to ensure that everyone shall have an effective right to a nationality,

REQUESTS the Secretary-General, in consultation with interested commissions and specialized agencies:

(a) To undertake a study of the existing situation in regard to the protection of stateless persons by the issuance of necessary documents and other measures, and to make recommendations to an early session of

/the Council

the Council on the interim measures which might be taken by the United Nations to further this object;

(b) To undertake a study of national legislation and international agreements and conventions relevant to statelessness, and to submit recommendations to the Council as to the desirability of concluding a further convention on this subject."

This resolution is clear and categorical. The resolution of the Commission on Human Rights which the Council's resolution cites and supplements is no less so[1/].

1/ The resolution of the Commission on Human Rights was worded as follows:

"46. STATELESS PERSONS

The Commission considered a Draft Resolution on Stateless Persons proposed by the Working Group on the Covenant relating to Stateless persons (document E/CN.4/56, page 15). As a result, it adopted the following resolution:

THE COMMISSION ON HUMAN RIGHTS

(1) EXPRESSES the wish:

(a) .....

(b) That early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any Government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation.

(2) RECOMMENDS that such work be undertaken in consultation with those Specialized Agencies at present assuming the protection of some categories of persons not enjoying the protection of any Government and that due regard be paid to relevant international agreements and conventions."

(See Economic and Social Council, Official Records, third year, sixth session, Supplement No. 1, pages 13 and 14.)

/It should be noted

It should be noted that subsequent to the Council's resolution, the United Nations General Assembly adopted the Universal Declaration of Human Rights, which states the following:

"Article 15.

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

However, the Council resolution quoted above envisages precisely those means which would enable Article 15 of the Declaration of Human Rights to be implemented, namely, in the first place "the adoption of interim measures to afford protection to stateless persons", and, secondly, action "to ensure that everyone shall have an effective right to a nationality".

Lastly, the Economic and Social Council resolution 248 (IX) of 6 and 8 August 1949 itself repeatedly refers to stateless persons along with refugees. This resolution is worded as follows:

"THE ECONOMIC AND SOCIAL COUNCIL,

HAVING CONSIDERED the study relating to the question of displaced persons, refugees and stateless persons prepared by the Secretary-General, and the resolution on the nationality of married women adopted by the Council at its present session,

TAKING NOTE of the recommendations contained therein for improving the status of refugees and stateless persons and for the elimination of statelessness,

DECIDES to appoint an ad hoc Committee consisting of representatives of thirteen Governments, who shall possess special competence in this field, and who, taking into account comments made during the discussions on the subject at the ninth session of the Council, in particular as to the distinction between displaced persons, refugees and stateless persons, shall:

(a) Consider the desirability of preparing a revised and consolidated convention relating to the international status of refugees and stateless persons and, if they consider such a course desirable, draft the text of such a convention;

....."

It has already been pointed out that in paragraph (a) quoted above the French

/text reads

text reads "des réfugiés et des personnes déplacées", while the English text reads "of refugees and stateless persons".

No census has been taken of non-refugee stateless persons, but they may be assumed to be relatively few in number.

Three courses of action may be taken in regard to non-refugee stateless persons. The first course would be to admit them to benefit under the new proposed convention, which would thus protect stateless refugees and non-refugee stateless persons. The second course would be to draft a special convention to confer a status upon non-refugee stateless persons. The third course would be to drop the question of non-refugee stateless persons until further notice.

If it is considered that it would be inexpedient to abandon the path indicated by the Economic and Social Council in its resolution of 1 and 2 March 1948 and if the last course of action is rejected in consequence, there remain the solution of a single convention for stateless refugees and non-refugee stateless persons and the solution of two separate conventions. The former solution would appear to be the simpler.

It may be that some States would not be prepared to grant to non-refugee stateless persons the status which they grant to refugees. In that case they would merely have to submit a reservation excluding the category of non-refugee stateless persons.

CHAPTER II

ADMISSION

Article 3

1. In pursuance of Article 14 of the Universal Declaration of Human Rights the High Contracting Parties shall give favourable consideration to the position of refugees seeking asylum from persecution or the threat of persecution on account of their race, religion, nationality or political opinions.

2. The High Contracting Parties shall to the fullest possible extent relieve the burden assumed by initial reception countries which have afforded asylum to persons to whom paragraph 1 refers. They shall do so, inter alia, by agreeing to receive a certain number of refugees in their territory.

Comment

This Article on the admission of refugees does not touch on the actual status of refugees and lays down no binding legal obligations. It does, however, indicate a number of guiding principles which it might be thought desirable to incorporate in the Convention.

Paragraph 1

Although each State decides within its absolute discretion whether or not an alien should be admitted to its territory, it is advisable to lay down the principle that States will give favourable consideration to the case of victims or persecution seeking asylum in their territory.

In this connexion it should be recalled that Article 14 of the Universal Declaration of Human Rights provides:

"(1) Every one has the right to seek and to enjoy in other countries asylum from persecution.

"(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purpose and principles of the United Nations."

Paragraph 2

Owing to their geographical position and liberal traditions, some States are destined to become the initial reception countries for refugees. It is but just that other countries should not allow these to bear the whole burden and by agreeing to admit a certain number of refugees to their territory should assume their equitable share.

/Clearly

Clearly no binding and precise obligations can be imposed on Governments -- for example by specifying the extent to which they must agree to receive refugees on their territory. It is for this reason that the Article includes the deliberately vague form of words: "a certain number of refugees".

/CHAPTER III

CHAPTER III

JURIDICAL CONDITION

Article 4

Personal status

1. The personal status of refugees (and stateless persons) shall be governed by the law of their country of domicile or, failing such, by the law of their country of residence. (Same text as Article 4, first paragraph of 1933 Convention).

2. Family law, in particular the celebration and the dissolution of the marriages of refugees (and stateless persons) and the law respecting successions, whether ab intestato or under a will, shall be governed by the rules concerning substance, form and competence of the law of the country of domicile, or, failing such of the law of the country of residence. (See Article 5, 1933 Convention.)

3. Rights acquired under a law other than the law of the country of domicile or present residence of the refugee (or stateless person), more particularly rights attaching to marriage (matrimonial system, legal capacity of married women etc...), shall be respected, subject to compliance with the formalities prescribed by the law of their country of domicile, or, failing such, by the law of their country of residence, if this be necessary. (See Article 4, third paragraph, of the 1933 Convention.)

4. Wills made by refugees (and stateless persons) in countries other than the reception country, in accordance with the laws of such countries, shall be recognized as valid.

Comment

Paragraph 1

Two ideas are embodied in this paragraph:

(1) In the first place it establishes that the personal status of refugees will be governed by the law of their country of domicile or, failing this, by the law of their country of residence. In so doing it confirms the practice followed. In fact, the laws and jurisprudence regarding the personal status of stateless persons are nowadays practically uniform.

The law of the country of domicile or, in default of a domicile, of the country of residence is applicable. It may be noted that in certain legislations the notion of domicile, which is not always easily definable and is differently

regarded in the various countries, has been eliminated; the personal status of stateless persons is determined by the law of their country of regular residence. This rule has great advantages and consideration might well be given to its adoption in the present Convention. Nevertheless, in view of the practice so far followed in the Conventions, the dual formula of the 1933 and 1938 Conventions has been retained in the preliminary draft.

(2) In the second place paragraph 1 introduces an innovation. It makes no distinction between refugees who are stateless de jure and those who are stateless only de facto. In point of fact persons in either category no longer enjoy the protection of their countries of origin. Moreover, it is sometimes difficult to determine with certainty whether the refugee is or is not stateless de jure and even to establish his former nationality. This simplification has advantages for the nationals of the country of asylum. Their law will be applied in any legal relations they may establish with refugees. Courts will be freed from the frequently very difficult task of deciding which law is applicable and of discovering what are the provisions of the foreign law which in present circumstances is subject to frequent and substantial changes.

There are precedents to support the solution advocated. Thus, the French Government, by a decree of 15 March 1945, extended to all Spanish refugees, whether stateless de facto or de jure, Article 4 of the 1933 Convention (law of the country of domicile or, failing this, law of the country of residence). Similarly, an Ordinance now being drafted by the Allied High Commission in Germany adopts the principle that the law of the country of regular residence should be applied to all refugees and displaced persons.

Paragraph 2

This paragraph applies the principle established in the preceding paragraph. It expressly lays down that personal status includes family law (that is to say filiation, adoption, legitimation, parental authority, guardianship and curatorship, marriage and divorce) and the law concerning successions. The authorities of the country of residence will therefore be competent to celebrate marriages in accordance with the rules regarding form and substance of the place where the marriage is celebrated. Similarly courts will be competent to decree divorces in accordance with the lex fori establishing the conditions for divorce.

/Paragraph 3

Paragraph 3

Paragraphs 3 and 4 make certain exceptions to the rule laid down in Paragraph 2.

Paragraph 3 is concerned with safeguarding acquired rights and applies the general rule regarding acquired rights to a particular case. It merely reproduces provisions contained in the Conventions of 1933 and 1938.

It would be undesirable to modify without reason the capacity of married women or the matrimonial regime and to impose on the spouses new rules which they did not envisage when they contracted the marriage. Nevertheless, to protect the interests of third parties, refugees are required to comply with the formalities prescribed by the country of asylum.

Paragraph 4 deals with wills made by refugees. It frequently happens that refugees have made a will in their country of origin in accordance with the provisions of the law of that country and are convinced that the will they brought away with them remains valid. The will may not however conform to the rules as regards form and substance of the country of residence. As a result, persons who believe that they have taken the necessary steps to protect the interests of their next of kin die intestate. Paragraph 4 provides against this danger.

Article 5
Movable and immovable property

The High Contracting Parties undertake to accord to refugees (and stateless persons) whose regular residence is in their territory the most favourable treatment accorded under treaty to foreigners (or the treatment accorded to foreigners generally) with regard to the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Comment

The difficulties which may be encountered by foreigners relate principally to the acquisition of immovable property and securities (stocks) and to the lease of dwelling accommodation or premises for the purposes of carrying on an occupation.

There are two solutions:

1. The first would be to accord to refugees the most favourable treatment accorded under treaty to foreigners.

/It may be noted

It may be noted that in certain countries foreigners are not covered by rent laws for the protection of tenants, save by virtue of treaties. If, therefore, refugees, who are usually destitute, are not to enjoy the treatment accorded under treaty to foreigners, they will be debarred from the benefits of such laws, which will spell disaster for them.

2. The second solution would be to accord to refugees the treatment accorded to other foreigners generally, thus waiving the condition of reciprocity, which cannot be satisfied by refugees.

Article 6
Intellectual and industrial property

In respect of industrial and intellectual property (copyright, industrial property, patents, licences, trademarks, designs and models, trade names etc...), refugees (and stateless persons) shall enjoy the most favourable treatment accorded to nationals of foreign countries.

Comment

The condition of reciprocity mentioned in the commentary on the preceding article cannot be applied in respect of intellectual and industrial property in the case of refugees who are stateless. The requirement of reciprocity must therefore be ruled out in all cases.

However, it would appear that in this field it is not sufficient merely to grant stateless persons equality of treatment with foreigners in general and that it is desirable that they should be accorded the treatment enjoyed by nationals of the most-favoured nation, since intellectual and industrial property is the creation of the human mind and recognition is not a favour.

Article 7
Right of association

Refugees (and stateless persons) shall have the right to join non-profit-making associations, including trade unions.

Comment

The ordinary law of the democratic countries includes freedom of association which, in principle, is enjoyed by foreigners as well as by nationals; and Article 20 of the Universal Declaration of Human Rights lays down that:

/"1. Everyone

"1. Everyone has the right to freedom of peaceful assembly and association." In these circumstances, there can be no objection to stateless persons joining non-profit-making associations. These are associations pursuing cultural, sports, social or philanthropic aims, as distinct from associations "for pecuniary gain", whose aim is the making of profits. In not a few countries, particularly in Europe, the law is based on the distinction between these two categories of associations, which are subject to different regulations. It is therefore advisable to include a special provision relating to non-profit-making associations in the Convention. Profit-making associations are covered by the provisions dealing with the exercise of the professions (see Article 13).

It will be noted that the text expressly refers to trade unions, in order that there should be no doubt with respect to them.

Article 8

Exemption from reciprocity 1/

(See 1933 Convention, Article 14)

The enjoyment of the rights and favours accorded to foreigners subject to reciprocity shall not be refused to refugees (and stateless persons) in the absence of reciprocity.

Comment

At the root of the idea of the juridical status of foreigners is the idea of reciprocity. The law considers a foreigner as a being in normal circumstances, that is to say, a foreigner in possession of a nationality. The requirement of reciprocity of treatment places the national of a foreign country in the same position as that in which his own country places foreigners. By this means, the more liberal countries help to induce other countries to improve the status of foreigners.

Since a stateless refugee is not a national of any State, the requirement of reciprocity loses its raison d'être and its application to refugees would be a measure of severity. Refugees would be placed in an unjustifiable position of inferiority. (See Study on the Position of Stateless Persons, presented by the Secretary-General -- Part I.) 1/

1/ See Document E/1112.

/When submitting

When submitting a draft law to Parliament in 1936 for the approval of the Convention of 28 October 1933, the French Government explained its motives for introducing the law as follows:

"The cases concerned are those in which the law, while not creating privileges in favour of the nationals of a particular country, grants national treatment to foreigners subject to one condition only, that of reciprocity, whether legal or conventional.

"The purpose of the law is obvious. The limitation it imposes is justified but cannot be applied to refugees. In fact, refusal to accord national treatment to foreigners in the absence of reciprocity is merely an act of mild retaliation. The object is to reach, through the person of the nationals concerned, those countries which decline to adopt an equally liberal regime and observe the rule of reciprocity. But which country or which Government can be reached through the person of a refugee? Can the refugee be held responsible for the legislation of his country of origin? Clearly, the rule of reciprocity, if applied to refugees, is pointless and therefore unjust. The injury caused to refugees by the application of this rule is substantial since the rule constantly recurs in texts governing the status of foreigners. Since the condition of reciprocity cannot be satisfied, refugees are denied the enjoyment of a whole series of rights which are accorded in principle to all foreigners."[1/]

Article 9

The right to sue and be sued[2/]

(See 1933 Convention, Article 6)

1. Refugees (and stateless persons) shall have, in the territories of the High Contracting Parties, free access to the courts of law. (Same text)

2. In the countries in which they have their domicile or regular residence, refugees (and stateless persons) shall enjoy the same rights and privileges as nationals. They shall, on the same conditions as the latter, enjoy the benefit of

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1/ Documents parlementaires -- Chamber.
Annex No. 6988, Meeting of 17 March 1936, page 627.

2/ See study E/1112, Vol.1, page 35 and page 72.

legal assistance. They shall be exempt from cautio judicatum solvi. (Same text)

3. In the matters referred to in Paragraphs 1 and 2 above, refugees (and stateless persons) shall be treated, in the countries of the High Contracting Parties in which they do not reside, as nationals of the country where they have their domicile or regular residence.

Comment

Paragraphs 1 and 2

Although in principle the right of a refugee to sue and be sued is not challenged, in practice there are insurmountable difficulties to the exercise of this right by needy refugees: the obligation to furnish cautio judicatum solvi and the refusal to grant refugees the benefit of legal assistance make the right illusory. In many countries, legal assistance is available solely to nationals and only foreigners who can invoke a treaty of reciprocity are granted the benefit of such assistance.

Refugees should therefore be exempted, as was done in the Conventions of 1933 and 1938, from the obligation to furnish cautio judicatum solvi and should enjoy the benefit of legal assistance on the same conditions as nationals.

Paragraph 3

Refugees are to have free access to justice, not only in their country of residence but in any other country party to the convention. They would be entitled in this respect to benefit under the system applied to nationals of the country of asylum in pursuance of the treaties in force.

CHAPTER IV

RESPONSIBILITIES OF REFUGEES AND OBLIGATIONS INCUMBENT UPON THEM

Article 10

General obligations

Refugees (and stateless persons) authorized to reside in a country must conform to the laws in force.

Comment

This paragraph constitutes a reminder of the essential duties common to nationals as well as to foreigners in general.

Article 11

Fiscal charges[1/]

(see 1933 Convention, Article 13)

1. The High Contracting Parties undertake not to impose upon refugees (or stateless persons) residing in their territory duties, charges or taxes, under any denomination whatsoever, other or higher than those which are or may be levied on their nationals in similar situations. (Same text)

2. Nothing in the foregoing provisions shall prevent the application of the provisions of the laws and regulations concerning charges in respect of the issue to foreigners of administrative documents or the extension of the validity of such documents.

3. The High Contracting Parties reserve the right to impose upon refugees of the various categories, according to their country of origin, a stamp duty payable either on identity cards or residence permits or on travel documents. Revenue accruing from this duty shall be wholly applied to charities for the relief of refugees of the various categories concerned.

Comment

Paragraph 1

The provision contained in this paragraph is reproduced word for word from the 1933 Convention (Article 13, paragraph 1).

1/ See Study E/1112, Vol. 1 - page 36 and page 75.

/Paragraph 2

Paragraph 2

This paragraph reproduces the text of the 1933 Convention (Article 13, paragraph 1) with one change: mention of the Nansen stamp is omitted. A special paragraph (paragraph 3) deals with charges of this kind.

Paragraph 3

This paragraph empowers Governments to resume and extend the former Nansen Stamp system.

From the financial point of view the stamp system can only yield limited, but not negligible, results. From the moral point of view it has a definite value since it affirms the solidarity of refugees.

Article 12

Military service and other personal services[1/]

The High Contracting Parties reserve the right to subject refugees (and stateless persons) regularly residing in their territory to compulsory military service and to other personal services (labour service, national service, requisitions in the event of public emergency etc.) in the same manner as nationals.

Comment

It is reasonable that a refugee residing in the country of asylum, enjoying a satisfactory status and earning his living there should be subject to the military service and other personal services incumbent on nationals.

As is known, the Annex to the Hague Convention of 18 October 1907 respecting the Laws and Customs of War on Land includes an Article 23, the last paragraph of which provides as follows:

> "A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of war."

The question is whether this Article should not be interpreted as prohibiting the use of refugees in military operations directed against their country of origin.

In point of fact refugees who are stateless de jure are no longer "nationals"

1/ See Study E/1112, Vol. 1, page 36 and page 76

/of their country

of their country of origin from the legal standpoint. De facto stateless refugees are in a special position. All ties between them and their country of origin having been broken, it is doubtful whether they come within the province of the rule quoted above, which was certainly not intended to cover refugees. Some refugees might, however, be reluctant to take up arms against those whom, for all their aversion to the government and regime of their country of origin, they still regard as compatriots.

/CHAPTER V

CHAPTER V

CONDITIONS[1] OF EMPLOYMENT

If the refugee is to lead a normal life and not to be a burden on the national or international community, he must be able to work. Refugees must therefore be given fairly liberal access to the occupations in which they can find employment

A distinction must be made between:

(i) Wage-earning employment

(ii) Self-employment

(iii) Liberal professions.

Article 13

Wage-earning employment

(see Convention of 1933, Article 7)

1. The restrictions ensuing from the application of laws and regulations for the protection of the national labour market shall not be applied in all their severity to refugees (and stateless persons) domiciled or regularly resident in the country (same text).

2. The restrictions to which the paragraph last preceding refers shall be automatically suspended in favour of refugees (and stateless persons) domiciled or regularly resident in the country, to whom one of the following circumstances applies:

(a) The refugee has been resident for not less than three years in the country;

(b) The refugee is married to a person possessing the nationality of the country of residence;

(c) The refugee has one or more children possessing the nationality of the country of residence. (same text)

3. The High Contracting Parties reserve the right to accord the treatment given to national wage-earners to specified categories of refugees.

Comment

This article is of particular importance. Because of their limited resources and their status, wage-earning employment is the only type of employment to which

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1/ See Study E/1112, Vol. 1, page 30 and page 70.

/most refugees

most refugees can aspire.

The first two paragraphs of Article 12 repeat the provisions of the 1933 and 1938 Conventions.

The third paragraph is new.

Article 14

Self-employment

The High Contracting Parties undertake to accord to refugees (and stateless persons) regularly resident in their territory the most favourable treatment given to foreigners by virtue of treaties (or the treatment given to foreigners generally) as regards the right to engage in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Comment

It should be noted that a certain number of refugees are handicraft workers with special knowledge and occupational skills or manufacturers familiar with manufacturing processes peculiar to their country of origin.

There are two possible solutions:

1. The first would be to offer refugees the most favourable treatment given to foreigners by virtue of treaties.

2. The second would be to give refugees the treatment given to foreigners generally.

It will rest with the Committee to decide between these two possibilities.

Article 15

Liberal professions

1. The High Contracting Parties shall accord the most favourable treatment given to foreigners by virtue of treaties (or the treatment given to foreigners generally) to refugees (and stateless persons) who hold diplomas recognized as equivalent to the diplomas required by the country of asylum and are desirous of practising a liberal profession.

2. They shall promote, to the fullest extent compatible with their national laws, the settlement of such refugees in their colonies, protectorates and oversea territories and in mandated or trust territories.

Comment

Access to the liberal professions, which are the most highly regulated of all and generally speaking, overcrowded in European countries, is, in principle, barred to foreigners. Where, however, treaty provisions exist these professions are open to foreigners to some extent.

/It should be noted

It should be noted that there is a high proportion of members of the liberal professions among the refugees, including qualified and experienced scientists, engineers, architects and doctors holding diplomas equivalent to those required in the reception country. Such professional men, moreover, are not suited to any other occupation than their own.

There are two possible solutions:

1. The first would be to accord to refugees the most favourable treatment given to foreigners by virtue of treaties.

2. The second would be to accord to refugees the treatment given to foreigners generally.

This latter solution would in practice be of little help to refugees, since in point of fact access to the professions is normally only accorded to foreigners -- and even then with reservations -- by virtue of treaty provisions.

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CHAPTER VI

LABOUR REGULATIONS AND INDUSTRIAL ACCIDENTS

Article 16

1. Subject to the provisions of Article 13, the High Contracting Parties shall apply to refugees (and stateless persons) all the labour regulations applicable to nationals (wages, salaries and family allowances, working hours, holidays, benefits of collective agreements, guarantee of employment, age of admission to employment, employment of women and young persons, apprenticeship and vocational training, home-work, health and safety in employment etc...).

2. They shall accord to the victims of industrial accidents or their beneficiaries the same treatment that is granted to their nationals.

Comment

Generally speaking, labour regulations and the law regarding industrial accidents are applied in the same fashion to foreigners and to nationals. The placing of foreigners and national workers on the same footing not only met the demands of equity but was in the interests of national wage-earners who might have been afraid that foreign labour, being cheaper than their own, would have been preferred.

In these circumstances, equality between refugees and nationals, which is an accomplished fact in many countries, will not give rise to any objections.

The text of the Article enumerates the main elements of the labour regulations, all of which are to be applicable to refugees, subject to the provisions of Article 13 regarding the access of refugees to wage-earning employment.

CHAPTER VII

SOCIAL SECURITY

Article 17

The High Contracting Parties shall accord to refugees (and stateless persons) regularly resident in their territory the same treatment in respect of social security as to nationals (sickness, maternity, invalidity, old-age insurance, insurance against the death of the breadwinner and unemployment insurance).

Comment

A number of bilateral treaties and certain international treaties, notably those concluded under the auspices of the International Labour Office, place foreigners who are nationals of States Parties to the Agreements on the same footing as nationals in respect of social security. The legislation of some States accords the same treatment to nationals and to foreigners.

In these circumstances, the same equality should be ensured to refugees.

Article 18

Rationing

Where a rationing system exists, refugees (and stateless persons) shall be treated on the same footing as nationals.

Comment

Where it exists, retioning is intended to ensure that the inhabitants of a country receive some item of prime necessity. It is therefore essential that refugees should be admitted to the benefits of the rationing system.

/CHAPTER VIII

CHAPTER VIII

PUBLIC RELIEF

Article 19

The High Contracting Parties shall grant the relief and assistance accorded to nationals to refugees (and stateless persons) who are regularly resident in their territory and are unemployed, suffering from physical or mental disease and incapable because of their condition or age of earning a livelihood for themselves and their families, and also to children without support.

Comment

In countries where there is a highly developed social security system public relief is of secondary importance and is intended merely to fill in the gaps of the social security system.

Public relief can hardly be refused to refugees who are destitute because of infirmity, illness or age.

Most of the conventions dealing with public assistance contain certain stipulations which cannot be satisfied in the case of refugees, such as the requirement that the State of which the recipient of relief is a national should either repatriate him or assume liability for the cost of assistance.

In view of the impending termination of IRO the welfare and relief of refugees is particularly urgent.

/CHAPTER IX

CHAPTER IX

EDUCATION [1]

Article 20

1. Refugees (and stateless persons) shall enjoy, in the territory of each of the High Contracting Parties, the same treatment as nationals with respect to elementary education.

2. In the case of other education, refugees (and stateless persons) shall enjoy the most favourable treatment accorded to nationals of a foreign country, in particular as regards the remission of fees and charges and the award of scholarships.

Comment

Paragraph 1

Elementary education is to be provided for refugees in the same manner as for nationals both because elementary education satisfies an urgent need (it is for this reason that most States have made it compulsory) and because schools are the most rapid and most effective instruments of assimilation.

Article 26 of the Declaration of Human Rights lays down that:

> "(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory... ."

Paragraph 2

The other grades of education are generally speaking open to foreigners; refugees will therefore receive the benefit of this circumstance if they are placed on the same footing as other foreigners.

Since refugees are in a precarious economic position and the Government of their country of origin takes no interest in them, it would be desirable to do more than merely accord them the ordinary right enjoyed by foreigners; otherwise in practice although secondary and higher education is open to them, they will be unable, for want of money, to take advantage of it. For this reason it is proposed to grant refugees the most favourable treatment accorded to the nationals of a foreign country.

1/ See Study E/1112, Vol. 1, page 34 and page 70.

CHAPTER X

ADMINISTRATIVE SYSTEM

Article 21

Identity papers

The High Contracting Parties undertake to issue identity papers (residence card, identity card etc.) to refugees (and stateless persons) authorized to reside in their territory.

Comment

It is the practice to issue identity papers, under various designations, which serve both as identity cards and as residence permits.

This practice, which meets an essential requirement, should be generalized.

Article 22

Travel document (see 1933 Convention, Article 2)

1. The High Contracting Parties undertake to issue, on request, to refugees (and stateless persons) regularly resident in their territory, travel documents valid for not less than one year. The travel document shall entitle the holder to leave the country of issue and to return thereto throughout the period of validity of the document. The High Contracting Parties reserve the right, in exceptional cases, to limit the period during which the refugee (or stateless person) may return, provided that the said period is not less than three months.

2. The provisions regarding the issue of Nansen certificates contained in the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and in the Convention of 28 October 1933, and the provisions of the Inter-Governmental Agreement concluded in London on 15 October 1946 are not rescinded by paragraph 1 of the present article.

Comment

Under present conditions any person wishing to travel abroad is generally required to be in possession of a national passport and in most cases must request the country to which he wishes to travel to issue an entry visa. Refugees who do not enjoy the protection of the authorities of their country of origin do not have national passports. They would therefore be unable to leave the

initial reception country if a document replacing the passport had not been established for their benefit.

The documents which replace passports are:

(a) the Nansen certificate;

(b) the travel document established by the London Agreement of 15 October 1946;

(c) the various travel documents issued by the administrative authorities of certain countries.

The Nansen certificate 1/ and the travel document established pursuant to the London Agreement are completely satisfactory while the other documents mentioned in (c) above are not accepted by many countries and have not the same advantages as the documents established in accordance with an international agreement (documents (a) and (b)).

It would therefore be desirable that the delivery of travel documents authorized by an international agreement should become a general practice. In these circumstances the ad hoc Committee might consider the inclusion in the Convention of a clause requiring States to accede to the London Agreement of 15 October 1946.

1/ On 10 July 1944, thirty-three countries were parties to the Arrangement with respect to the Issue of Certificates of Identity to Russian Refugees, signed at Geneva on 5 July 1922.

On the same date twenty countries were parties to the Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees, supplementing and amending the previous Arrangements of 5 July 1922 and 31 May 1924, signed at Geneva on 12 May 1926.

(See Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations -- Twenty-First List)

Article 23

Administrative assistance

1. In all cases in which the exercise of a right by a foreigner requires the assistance of the authorities of his country (in particular of the consular authorities) the High Contracting Parties shall designate an authority which shall furnish assistance to refugees (or stateless persons). (Arrangement of 30 June 1928)

2. The authority so designated shall deliver or cause to be delivered to refugees unable to procure them by other means documents:

(a) certifying the identity and the position of the refugees;

(b) certifying their family position and civil status, in so far as these are based on acts performed or facts which occurred in the refugee's country of origin;

(c) testifying to the regularity, validity and conformity with the previous law of their country of origin, of documents issued in such country;

(d) certifying the signature of refugees and copies and translations of documents drawn up in their own language;

(e) testifying to the good character and conduct of the individual refugee, to his previous record, to his professional qualifications and to his university degrees or academic diplomas etc.

(f) recommending refugees to the competent authorities, particularly with a view to their obtaining visas, permits to reside in the country, admission to schools, libraries etc.

3. The certificates so delivered shall take the place of the original acts and documents and shall be accorded the same validity.

Comment

Paragraph 1

Refugees do not enjoy the protection and assistance of the authorities of their country of origin.

Consequently, even if the Government of the country of asylum grants the refugee a status which ensures him treatment equivalent to or better than that enjoyed by foreigners, it does not follow that on that account alone he will be allowed to enjoy the rights granted to him. If the refugee is actually to enjoy these rights, he must obtain the assistance of an authority which will perform

/for him

for him the services performed by national authorities in the case of persons with a nationality. In the absence of an international authority, the High Contracting Parties must appoint a national authority which will furnish its assistance to refugees and deliver the documents they require.

Paragraph 2

In order to perform the acts of civil life (marriage, divorce, adoption, settlement of succession, naturalization, acquisition of immovable property, constitution of associations, opening of bank accounts etc.), a person must produce documents to certify his identity, position, civil status, nationality etc., and if he is a foreigner, to testify to the provisions of his former or present national law and the conformity of instruments executed in his country of origin with the legislation of that country etc.

It is easy for a foreigner to obtain such documents. He has merely to apply to the national services which operate in his country of origin or which are accredited abroad and they will deliver the documents which he requires. A refugee whose links with his country of origin are broken cannot obtain such papers from the authorities of that country. In the absence of any international authority, a national authority designated for the purpose will be required to issue to refugees all the documents of which they stand in need. Paragraph 2 of Article 21 gives a list of these documents.

CHAPTER XI

EXPULSION AND NON-ADMITTANCE 1/

Article 24

(See 1933 Convention, Article 3).

1. Each of the High Contracting Parties undertakes not to remove or keep from its territory, by application of police measures, such as expulsions or non-admittance at the frontier (refoulement) refugees (and stateless persons) who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order.

2. The penalties enacted against foreigners entering the territory of the Contracting Party without prior permission shall not be applied to refugees seeking to escape from persecution, provided that such refugees present themselves without delay to the authorities of the reception country and show good cause for their entry.

3. Each of the High Contracting Parties undertakes in any case not to turn back refugees to the frontiers of their country of origin, or to territories where their life or freedom would be threatened on account of their race, religion, nationality or political opinions.

4. A refugee (or stateless person) authorized to reside regularly in the territory of any of the High Contracting Parties may not be expelled save in pursuance of the decision of a judicial authority.

5. Each of the High Contracting Parties reserves the right to apply such internal measures as it may deem necessary to refugees (or stateless persons) whose expulsion has been ordered and who are unable to leave its territory because they have not received, at their request or through the intervention of Governments or through the High Commissioner for Refugees or non-governmental agencies, the necessary authorizations and visas permitting them legally to proceed to another country.

Comment

Paragraph 1

The sovereign right of a State to remove or keep from its territory foreigners regarded as undesirable cannot be challenged.

1/ See Study E/1112, Volume I, page 24 and page 73.

/Nevertheless,

Nevertheless, expulsion or non-admittance at the frontier are serious measures in any event; they are especially serious in the case of a refugee who cannot be sent back to his country of origin and whom no other State can be compelled to accept. There is little likelihood that a foreign country will consent to receive a refugee whose expulsion has been ordered and who is thereby stamped as an undesirable. As every frontier is barred to a refugee whose expulsion has been ordered, only two possibilities are open to him, either not to obey the order and to go into hiding to avoid being caught or to cross a frontier illegally and clandestinely enter the territory of a neighbouring country. In that country too he must go into hiding to avoid being caught. In either case, after a certain time he is discovered, arrested, prosecuted, sentenced and escorted to the frontier after serving his sentence. Caught between two sovereign orders, one ordering him to leave the country and the other forbidding his entry into the neighbouring country, he leads the life of an outlaw and may in the end become a public danger.

In this way measures of expulsion or non-admittance at the frontier, intended to protect law and order, achieve opposite results when an attempt is made to apply them to refugees without taking into account their peculiar position.

Paragraph 1, while not preventing the expulsion of refugees, specifies that their expulsion must be dictated by grave reasons of national security or public order.

Paragraph 2

A refugee whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry (possession of national passport and visa) into the country of refuge. It would be in keeping with the notion of asylum to exempt from penalties a refugee, escaping from persecution, who after crossing the frontier clandestinely, presents himself as soon as possible to the authorities of the country of asylum and is recognized as a bona fide refugee.

Paragraph 3

The turning back of a refugee to the frontier of the country where his life or liberty is threatened on account of his race, religion, nationality or political opinions, if such opinions are not in conflict with the principles set forth in the United Nations Charter, would be tantamount to delivering him into the hand of his persecutors.

/The text of

The text of paragraph 3 reproduces that of the 1933 Convention (Article 3, paragraph 2) but with an addition which takes into account not only the country of origin, but also the other countries where the life or freedom of the refugee would be threatened for the same reasons.

Paragraph 4

Experience has shown that a large number of expulsion orders are due to false accusations and the malice of ousted competitors. Sometimes the orders are due to an error de persona. So long as expulsion proceedings are secret and so long as the expelled person is deprived of any means of presenting his case, mistaken decisions are inevitable. There are two possible solutions:

The first solution, embodied in the text of the proposed article, would be to prohibit expulsions save in pursuance of a decision of the judicial authority. It may be noted that the Commission on Human Rights included the following provision (Article 12) into the Draft International Covenant on Human Rights which it adopted at its fifth session:

> "No alien legally admitted to the territory of a State shall be expelled therefrom except on such ground and according to such procedure and safeguards as are provided by law".1/

The second and less far-reaching solution, representing the minimum guarantees which could be accorded to refugees, would be to adopt the following text:

> "Before any measure of expulsion is decided or carried out, the refugee should be informed of the grounds for his expulsion and shall have the right to be heard to state his case".

1/ Economic and Social Council, Official Records: fourth year, ninth session; Supplement No. 10, Report of the Fifth Session of the Commission on Human Rights, page 20.

CHAPTER XII

EXCEPTIONAL MEASURES

Article 25

Exceptional measures

Any exceptional measures which a High Contracting Party may be called upon to take against the person, property or interests of nationals of a foreign State, shall not be applied to refugees who are de jure nationals of the said State, solely on account of the fact that they belong legally to that State.

Comment

After the second World War, many refugees who had been persecuted by the Governments of the Axis countries were subjected to exceptional measures taken against the nationals of enemy countries (internment, sequestration of property, blocking of assets etc.) because of the fact that formally they were still de jure nationals of those countries. The injustice of such treatment was finally recognized and many administrative measures (screening boards, special tribunals, creation of a special category of "non-enemy" refugees etc.) were used to mitigate the practice followed in the first years of the war.

The Diplomatic Conference held at Geneva in 1949 recently introduced into the Convention on the Protection of Civilian Persons in time of war, a clause expressly stating that exceptional security measures (assigned residence and internment) shall not be applied to refugees solely on the basis of the fact that they belong legally to an enemy State. If this rule is to be applied in time of war, a similar rule must a fortiori be applied in time of peace.

The object of Article 25 is to remove both the person and property and interest of refugees from the scope of exceptional measures.

/CHAPTER XIII

CHAPTER XIII

CO-OPERATION WITH THE HIGH COMMISSIONER FOR REFUGEES

Article 26

The High Contracting Parties undertake to facilitate the work of the United Nations High Commissioner for Refugees and to maintain constant relations with him as long as a United Nations High Commissioner's Office for Refugees exists.

Comment

It is essential that there should be close and constant co-operation and trust between the High Commissioner and Governments; to achieve this, continuous relations between Governments and the High Commissioner are necessary.

It should be noted that the High Commissioner's Office for Refugees is not a permanent institution, but is to remain in existence for three years, as from 1 January 1951. It may be dissolved on 31 December 1953; equally, it may last a fairly long time. In any case, however, the fact that the Office is not a permanent institution should be taken for granted.

The temporary nature of the High Commissioner's Office should not, however, preclude the Convention from providing for systematic co-operation between the High Contracting Parties and the High Commissioner. Such co-operation would continue throughout the existence of the High Commissioner's Office.

It should be understood, nevertheless, that save only for the provisions regarding the High Commissioner the termination of the High Commissioner's Office would not render the Convention inapplicable.

Article 27

The High Contracting Parties undertake to designate a national authority to compile and to communicate to the High Commissioner:

(a) statistics concerning refugees (and stateless persons) and the laws and regulations concerning the status of refugees;

(b) all information regarding the condition of refugees (and stateless persons) and the application of the present Convention.

Comment

As has been remarked above (Article 23), in the absence of an international authority there should be, in every country of asylum, a national authority responsible for refugees, and maintaining contact with the various national services dealing with refugees. This authority would be responsible for liaison with the High Commissioner.

/CHAPTER XIV

CHAPTER XIV

NATURALIZATION

Article 28

1. The High Contracting Parties shall facilitate the assimilation and naturalization of refugees(and stateless persons)to the fullest possible extent. They shall make every effort inter alia to reduce the charges and costs of naturalization proceedings for destitute refugees (and stateless persons).

Comment

The decision of the State granting naturalization is, in this respect, absolute. It cannot be compelled to grant its nationality, even after a long waiting period, to a refugee settled in its territory since naturalization confers on the naturalized citizen a series of privileges, including political rights.

Nevertheless, without establishing formal obligations in this respect, States can be requested to facilitate to the fullest possible extent, the naturalization of refugees, inter alia by giving favourable consideration to requests for naturalization received from refugees and by reducing the financial obstacles which procedural charges and costs may represent to destitute refugees.

Observation on Article 28

In connexion with this Article the idea has been suggested that after a fairly long lapse of time (e.g. fifteen years) the authorities of the country in which the refugee or stateless person had settled might propose to him that he should apply for naturalization. If he failed to do so within a year, or did not give valid reasons for such failure, the Contracting Party would be entitled to consider itself as released from the obligations of the Convention.

1. In favour of this idea the following arguments may be advanced: The position of a de jure or de facto stateless refugee is abnormal and should not be regarded as permanent. If after fifteen years the refugee is unwilling or unable to return to his country of origin and the country where he is established is prepared to grant him its nationality, he should become naturalized. If, indeed, it is recognized that an individual has the right to a nationality, as a counterpart it should be the duty of the stateless person to accept the nationality of the country in which he has long been established -- the only nationality to which he can aspire -- if it is offered him.

If a political change subsequently occurred in the refugee's country of

/origin nothing would

origin nothing would prevent him from returning and regaining his first nationality. The fact that it was not he who had taken the initiative would make it all the more difficult to reproach the refugee with his change of nationality.

In conclusion, if this idea were adopted it would no longer be possible to accuse certain refugees -- as has been done in the past -- of "settling down in a condition of statelessness".

2. The following arguments may be advanced against this proposal: even after fifteen years a refugee may remain fundamentally attached to his country of origin and cherish the hope of returning. For example, the Italians who sought asylum abroad after the establishment of the Fascist regime in 1922 were able to return to their country twenty years after. Nationality should not be imposed on a refugee in violence to his inmost feelings.

Compulsory naturalization would be particularly inappropriate in the case of persons who have been prominent politically and represent a cause or a party.

Finally, it is not always true that after a change of regime the Government of the country of origin will at once reinstate in their original nationality refugees who have in the meantime acquired a new one. This may necessitate formalities and entail delays. In some cases the new Government may keep political opponents at a distance by preventing or delaying reinstatement.

CHAPTER XV

TRANSITORY AND GENERAL PROVISIONS

Article 29

Persons deported from their country of origin or of regular residence by the Nazi authorities during the Second World War and present in the territory of one of the Contracting Parties shall be deemed to satisfy the requirement of regular residence for the purposes of the present Convention in respect of the time during which they resided in the country to which they were deported.

Comment

A number of provisions in the preliminary draft make the enjoyment of certain rights subject to the condition of regular residence. In order to eliminate any doubts regarding the case of displaced persons, that is to say persons introduced by force into another country, it should be expressly laid down that time spent in the country to which they were deported is reckoned as regular residence.

Article 30

Each of the High Contracting Parties shall take all the legislative or other measures necessary under the rules of their constitution for the application of the present Convention.

Comment

This Article is a reminder of the duty of Governments which enter into an international agreement to ensure the fulfilment of their obligations by taking, in accordance with their constitution, any measures necessary for that purpose.

The text of Article 30 is identical with that of Article 27 of the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, adopted by the General Assembly on 2 December 1949 1/.

Article 31

Application of the present Convention or of the 1933 and 1938 Conventions)

In the case of Parties to the Conventions of 28 October 1933 and 10 February 1938 the present Convention shall not apply to the refugees covered by these Conventions.

/ See Document A/1164, 30 November 1949 and Document A/1194, 3 December 1949.

Comment

Provision must be made for this eventuality, since Parties to both the 1933 and 1938 Conventions and the present new Convention would be subject to different obligations with respect to the same persons by reason of the effects of these two categories of Conventions.

The solution embodied in the above draft article is that described in the Introduction (see page 9, Solution B).

Final clauses

Article 32 (Arbitration clause)

If any dispute shall arise between the Parites to the present Convention relating to its interpretation or application, and if such dispute cannot be settle by other means, the dispute shall, at the request of any one of the Parties to the dispute, be referred to the International Court of Justice.

Comment

This highly-important clause is customary.

Article 33 (Signature, ratification, accession)

1. The present Convention shall be open until ... (one year after the Convention is opened for signature) for signature on behalf of any Member State of the United Nations and on behalf of any non-member State to which an invitation has been addressed by the Economic and Social Council.

2. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The States mentioned in the first paragraph which have not signed the Convention by the ... (date indicated in the first paragraph) may acceed to it.

Accession shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations.

Comment

These provisions are customary.

Article 34 (Entry into force)

The present Convention shall come into force on the ninetieth day following the day of deposit of the second instrument of ratification or accession.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Comment

In view of its nature the Convention might with advantage enter into force after two States have deposited their ratification or accession.

/ Article 35 (Reservations)

Article 35 (Reservations)

1. States may enter reservations concerning solely the provisions of articles ... (these articles to be prescribed).

2. Any State already a Party to the Convention may at any time enter reservations with respect to the Articles enumerated in paragraph 1. For this purpose it shall address a written notification to the Secretary-General of the United Nations.

Reservations thus notified shall take effect one year after the date of receipt of notification.

3. Any State already a Party to the Convention may at any time, by written notification addressed to the Secretary-General, withdraw all or any of the reservations previously entered.

Reservations thus withdrawn shall cease to be applicable on the ninetieth day after the date of receipt of such notification.

Comment

Paragraph 1. This system of reservations is adapted to the nature of the Convention. The Convention embodies a number of provisions which might be considered essential and could not be subject to reservation, since otherwise accession to the Convention would have little or no value.

The remaining provisions, on the other hand, might be made subject to reservations by the States. Such reservations being authorized by the actual terms of the Convention, States would merely be required to indicate them at the time of signature.

Paragraph 2. This provision is connected with Article 37, which provides that the Convention may be denounced at any time by a written notification, to take effect after one year. Just as it may denounce the Convention, and on the same conditions, any State may enter new reservations.

Paragraph 3. Any State desiring to withdraw reservations previously entered may do so at any time by notification. Such notification would take effect after an interval of only ninety days, designed simply to enable the other States concerned to be informed.

/Article 36 (Colonial clause

Article 36 (Colonial clause)

1. Any State may declare at the time of ratification or accession that the application of the present Convention shall not extend to all or part of the territories for whose international relations it is responsible.

2. Any State may subsequently notify the Secretary-General of the United Nations that it wishes to extend the application of the present Convention to all or part of its territories in respect of which the declaration was made under paragraph 1, and the present Convention shall apply to all the territories mentioned in this notification on the ninetieth day following the date of receipt of the notification.

Comment

This clause, which has political implications, has led to some differences of opinion.

The Secretary-General believes that in view of the method used for the preparation of this preliminary draft, this clause should not be omitted. It will rest with the Committee to decide.

Article 37 (Duration and denunciation)

1. Any Party to the Convention may denounce it at any time by a written notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Party making it one year from the date upon which it is received by the Secretary-General of the United Nations.

Comment

Generally speaking it is desirable, and makes for greater stability in international relations, to fix the duration of an international convention at a certain period (five or ten years).

In the present case it is proposed to provide for the denunciation of the Convention at any time, such denunciation taking effect after on year, in view of the special nature of the refugee question, which is subject to change. States will have less hesitation in committing themselves if they know that in the event of a new situation they will have the right to denounce the Convention.

/Article 38 (Revision)

Article 38 (Revision)

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Comment

This Article is identical with Article 16 of the Convention on Genocide of 9 December 1948.

The refugee problem is in process of constant change. A revision of the Convention may therefore become necessary even after a relatively short lapse of time.

If one of the Contracting Parties enters a request for revision, the General Assembly will be required to examine the matter.

Article 39 (Notifications by the Secretary-General)

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in Article 33:

(a) of signatures, ratifications and accessions received in accordance with Article 32;

(b) of the date on which the present Convention will come into force in accordance with Article 34;

(c) of reservations added or withdrawn in accordance with Article 35 (paragraphs 2 and 3);

(d) of denunciations received in accordance with Article 37;

(e) of requests for revision received in accordance with Article 38.

Comment

None.

Article 40 (Languages, date)

The present Convention, the English, Chinese, Spanish, French and Russian texts of which shall be equally authentic, shall be dated ...

Comment

None.